

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case. No. 6:06-cv-479-ORL-18JGG

JAMES A. SPITZER,

Defendant.

COMPLAINT

The United States of America complains and alleges against the defendant, James A. Spitzer, as follows:

1. This is a civil action in which the United States seeks to recover, with interest, an erroneous refund of 2004 federal income tax of \$16,614.00 that was issued to the defendant, James A. Spitzer, as a result of the misrepresentations and fraudulent statements that Spitzer made on his 2004 Form 1040EZ tax return.

**Jurisdiction and Venue**

2. This civil action has been authorized by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General of the United States.

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and IRC (26 U.S.C.) § 7402.

4. Defendant James A. Spitzer resides in Winter Park, Florida, within the jurisdiction of this Court.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1396.

6. On or about April 15, 2005, Spitzer signed and filed an IRS Form 1040EZ federal income tax return for the year 2004.

7. Implementing the false and fraudulent tax scheme promoted by Peter Eric Hendrickson, Spitzer's self-prepared tax return falsely stated that Spitzer had no (1) wages, tips or salaries; (2) adjusted gross income; or (3) taxable income during 2004.

8. The Hendrickson scheme is based on the false and frivolous argument that the terms "wages" and "income" for purposes of the federal income tax and for federal tax withholding are limited to government employees. Hendrickson's theories about the supposed narrow application of federal income-tax laws (including his arguments that wages are not income, and that only federal workers are required to pay income taxes) have been uniformly and repeatedly rejected by the federal courts. As one court recently said, the claim that wages are not income "has been rejected as many times as it has been asserted." *Abdo v. United States*, 234 F. Supp.2d 553, 563 (M.D. N.C. 2002), *affirmed*, 63 Fed. Appx. 163 (4<sup>th</sup> Cir. 2003). Other courts long ago rejected Hendrickson's claim that wages and income for federal income tax and withholding purposes mean only wages and income of government employees. *See e.g., United States v. Latham*, 754 F.2d 747, 750 (7<sup>th</sup> Cir. 1985) (the argument "that under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute. It is obvious that within the context of both statutes the word "includes" is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others."); *McKinley v. United States*, 1992 WL 330407 (S.D. Ohio, Sept. 3, 1992) ("The plaintiffs assert that only federal officers, federal employees, elected officials or

corporate officers are ‘employees’ who are considered to be taxpayers under the Internal Revenue Code. The plaintiffs argue, in essence, that the explicit inclusion of federal officers and employees within the definition of ‘employee’ for the purposes of the I.R.C. operates to exclude all others from the definition. Plaintiffs’ exhibit D-1 in their motion to affirm status determinations calls the Court’s attention to their position on this issue by citing to T.R. 31.3401(C)-1, which explicitly includes the federal government within the definition of employer. However, the plaintiffs’ interpretation of the law comes from a misunderstanding of the law, and has been rejected by the federal courts. *E.g.*, *United States v. Latham*, 754 F.2d 747, 750 (7th Cir.1985); *Peth v. Breitzmann* [85-1 USTC ¶ 9321], 611 F. Supp. 50, 53 (D.C.Wis.1985). In fact, the term ‘employee’ as used in the I.R.C. does include private wage earners. *E.g.*, *Latham* [85- 1 USTC ¶ 9180], 754 F.2d at 750.”).

9. Contrary to his representations on his false Form 4852, Spitzer in fact did receive a IRS Form W-2 Wage and Tax Statement for 2004 from his employer, Rollins College, that correctly reported his 2004 wages of \$86,483 and reported that \$16,935 in federal income taxes withheld from his wages in 2004. But Spitzer did not attach the W-2 form to his tax return or otherwise submit it to the IRS. Instead, Spitzer attached an IRS Form 4852 (“Substitute for Form W-2, Wage and Tax Statement, etc.”) to his 2004 tax return, signed the Form 4852 under penalty of perjury, and falsely and fraudulently stated on the Form 4852 that Rollins had paid him no (a) wages; (b) social security wages; or (c) Medicare wages during 2004.

10. Pre-printed language on block 9 of the Form 4852 that Spitzer filed asks “Explain your efforts to obtain Form W-2, 1099-R, or W-2c, Statements of Corrected Income and Tax Amounts.” In response to this request on the form Spitzer falsely and fraudulently stated:

Request, but the company refuses to issue forms correctly listing payments of 'wages as defined in 3401(a) and 3121(a)' for fear of IRS retaliation. The amounts listed as withheld on the W-2 it submitted are correct, however.

The quoted language is taken directly from Peter Eric Hendrickson's tax-fraud promotional materials. The quoted language is false because the W-2 that Rollins issued in fact correctly reported his wages of \$86,483. On information and belief the quoted language is also false in stating that (a) Spitzer had requested Rollins to issue a W-2 or corrected W-2, (b) that Rollins had refused to do so, and (c) that Rollins's refusal was "for fear of IRS retaliation."

11. On or about April 22, 2005, based on Spitzer's false and fraudulent representations described above, the Treasury Department issued a 2004 income-tax refund of \$16,936.00 to Spitzer. This is the amount of the withheld federal income taxes listed on the Form 4852 that Spitzer filed with his 2004 tax return. Of that amount, Spitzer was entitled to a refund of only \$322.00. The balance of the amount actually refunded to Spitzer - \$16,614 - represented an erroneous refund.

12. Spitzer obtained the erroneous refund of \$16,614.00 by fraud and by misrepresentation of material facts, as described above.

13. Because Spitzer misrepresented, on his 2004 Form 1040EZ tax return, that he received no wages, salaries or other income during 2004, and claimed credit for the federal income taxes that were withheld from his wages or salary for 2004, the IRS should not have issued the refund, and therefore the issuance of the \$16,614.00 erroneous refund was an error.

14. As a result of the erroneous refund, the United States is entitled to judgment against Spitzer in the amount of \$16,614.00, plus interest from April 22, 2005, to the date of payment as provided by law.

WHEREFORE, the United States prays as follows:

A. That this Court determine that the United States erroneously issued a 2004 income-tax refund to James A. Spitzer, in the amount of \$16,614.00;

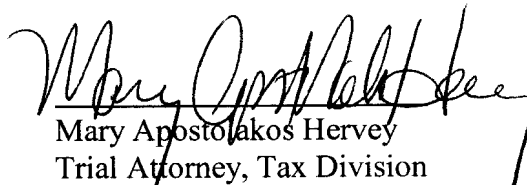
B. That judgment be entered on behalf of the United States and against James A. Spitzer, in the amount of \$16,614.00, plus interest thereon as allowed by IRC § 6602 from April 22, 2005;

C. That the United States of America be awarded its reasonable attorneys' fees and costs incurred in this action; and

D. That the Court grant the United States such other and further relief as the Court may deem to be just and proper.

Dated this 14 day of April, 2006.

PAUL I. PEREZ  
United States Attorney



Mary Apostolakos Hervey  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 14198  
Ben Franklin Station  
Washington, D.C. 20044  
Tel. (202) 514-6484  
Fax (202) 514-9868